



**Final Minutes of the State Board of Health  
October 10, 2012**

**Cherberg Building, Senate Hearing Room 3, Capitol Campus, 304 15th Ave. S.E., Olympia, WA 98501**

**State Board of Health members present:**

The Honorable John Austin, PhD, Chair  
Keith Grellner  
Maria Hernandez-Peck, PhD  
Stephen Kutz  
Donald Oliver

Patricia Ortiz, MD  
Mary C. Selecky  
James Sledge, DDS  
The Honorable Donna Wright  
Diana T. Yu, MD, MSPH

**State Board of Health members absent:**

**State Board of Health staff present:**

Michelle Davis, Executive Director  
Desiree Robinson, Executive Assistant  
Gordon MacCracken, Communications Consultant

Ned Therien, Health Policy Analyst  
Tara Wolff, Health Policy Analyst  
Lilia Lopez, Assistant Attorney General

**Guests and other participants:**

Drew Austin, Golden Fields Group  
Max Beers, Group B water system operator  
Wilber Bernier, Northwest Water Systems  
Sarah Borgida, Washington Dental Service Foundation  
Vicki Bouvier, Department of Health  
David Christensen, Department of Health  
Denise Clifford, Department of Health  
Ann Clifton, Mercury Awareness Team  
Kelly Cooper, Department of Health  
Emily Firman, Washington Dental Service Foundation  
John Fleming, JSF Engineering  
Steve Fuller, Department of Agriculture  
Jan Gee, Washington Food Industry Association  
David Gifford, Department of Health  
Joe Graham, Department of Health  
Aaron Henderson, Clark County Public Health  
Alli Larkin, Washington Action for Safe Water  
Russell Maier, MD, Washington Dental Service Foundation  
Allene Mares, Department of Health  
Drew Noble, H2O Management Services  
Joella Pyatt, Department of Health  
Laura Smith, Washington Dental Service Foundation  
Christie Spice, Department of Health  
Navruza Talilova, Public Health Seattle & King County  
Jennifer Tebaldi, Department of Health  
Tami Thompson, Department of Health  
Jill Trohimovich, Public Health Seattle & King County  
Phil Wyman, Public Health Seattle & King County

Danette York, Lewis County Public Health  
Kim Zabel, Department of Health

John Austin, Board Chair, called the public meeting to order at 9:35 a.m. and read from a prepared statement (on file).

### 1. APPROVAL OF AGENDA

*Motion: Approve October 10, 2012 agenda*

*Motion/Second: Grellner/Kutz. Approved unanimously*

### 2. ADOPTION OF JUNE 13, 2012 MEETING MINUTES

*Motion: Approve the June 13, 2012 minutes*

*Motion/Second: Oliver/Ortiz. Approved unanimously*

### 3. BOARD ANNOUNCEMENTS AND OTHER BUSINESS

Michelle Davis, Board Executive Director, reported Dr. Sledge's nomination committee provided recommendations to Secretary Selecky for the Featherstone Reid award. She said recent staff activities have included finalizing and distributing the State Health Report that the Board approved in June; revising the Board's website; updating the strategic plan based on decisions of the Board several meetings ago; and updating a 1999 memorandum of understanding with the Department of Health. She said staff working for the Governor's Council on Health Disparities is organizing a series of brown bag lunches to show the four episodes of the *Weight of the Nation*. In August, at the invitation of Secretary Selecky, Ms. Davis participated in a delegation that met with visiting health officials from the Taiwan Health Ministry. Duke University facilitated the visit. Ms. Davis reported the Department notified the Board, as required by law, about the inadvertent release of some confidential health information to research institutions. The Promotions Committee will review this issue and report back to the Board.

Ms. Davis noted the Department has provided a copy of the latest Washington local health funding report, which is available for Board members to review today. She said she would distribute an electronic copy to all Board members when it became available. She also noted the Joint Conference on Health will be held in Wenatchee at the beginning of the next week.

Ms. Davis said Chair Austin will miss the Board's November meeting because he will be attending the statewide meeting for the Washington Association of Counties. Part of that meeting will include initiation of the Washington Alliance of Local Boards of Health, which will act as a state association of local boards of health. The Department and the State Board of Health will be ex officio members of the Alliance.

Diana Yu, SBOH Member, reported meeting with the Minister of Health of Uganda. She said there was a lot of discussion about malaria. It is interesting that we have the mosquito vector in Washington, but do not see transmission because human cases are rare. She described participating on an issues group that included the Washington State School Directors Association (WSSDA) and that the group helped to review and update WSSDA immunization policies and procedures for students. She also reported working with the Department of Corrections regarding policies on testing individuals for HIV infection.

Stephen Kutz, SBOH Member, reported on the September 13 meeting of the Governor's Interagency Council on Health Disparities regarding updating its action plan. He served on a subcommittee that developed some recommendations for addressing behavioral health issues. Council staff will brief the Board in November about the work of the Council.

Keith Grellner, SBOH Member, reported the Board's Environmental Health Committee met several times during recent months by conference call to prepare for rule hearings today. He said the Committee also discussed possible future activities, including a briefing to the Board about this year's wildfires.

Member Yu asked whether the Board had received inquiries about the health effects of coal train dust. Ms. Davis said the Board received an inquiry about a year ago, but not since. She noted TVW has produced an interesting program about the issue that she recommends members view. Mary C. Selecky, Secretary of Health & Board Member, said the Department has been working with other state agencies to review the coal shipping proposals in a united approach through the Governor's office. She noted local health officers have on their agenda for their October 14 statewide meeting a discussion of the coal shipment issue.

#### **4. DEPARTMENT OF HEALTH UPDATE**

Secretary Selecky reflected on starting her fifteenth year on this Board, saying one of the first meetings she attended was related to HIV rules, which would be a topic on the agenda later in the day. She said there have been many fascinating developments on HIV issues in 15 years, such as the use of anti-viral agents to help prevent transmission.

Secretary Selecky reported on illnesses from a marijuana-laced product called spice, one in Southwest Washington and others in Oregon. It can cause kidney damage. It is banned in Washington. She said the Department of Health has been dealing with a recall of peanut butter contaminated with Salmonella that has caused 35 illnesses nationally, with two in Washington. She said there is also a recall of a contaminated medication that has resulted in 119 cases of fungal meningitis with 11 deaths. Although Washington is not known to have received any of the contaminated medication, the Department has been involved tracking the possibility.

Secretary Selecky said Washington's whooping cough outbreak has exceeded 4,000 reported cases. She said we are lucky there have been no deaths in Washington from this outbreak. Many people have been immunized since the start. She reminded everyone to get a flu shot this year and said adults should get a Tdap shot to prevent whooping cough, if they have not had one. She was pleased to report the immunization exemption rate has been dropping.

Secretary Selecky reported the Department shipped face masks left over from the swine flu outbreak to wildfire areas. She was very pleased to report the Department has restarted the tobacco quit line, thanks to the Governor and the Legislature. She announced Warren Featherstone Reid Award recipients. Kris Locke, the late wife of former chair of this board Tom Locke, is being honored with a posthumous award for her work with tribal health programs. The Pioneer Center, a residential treatment center for chemical dependency located in Mount Vernon, is also being honored.

Secretary Selecky reported that scheduled federal budget cuts called sequestration would have a huge effect on health programs if they go into effect next January. Congress will meet again before the end of the year to consider whether to alleviate the consequences. She said the State's revenue appears to be holding steady, but there will be a shortfall for the needs of State agencies. She said a

court order for more State funding to public schools would add to the shortfall by two billion dollars. With a new Governor, about a 20 percent turnover in the Legislature, plus the continuing budget challenges, all of us can expect lots of change in the coming year.

Chair Austin thanked the Department of Health and Department of Natural Resources for their work helping clean up Clallam Bay for shellfish harvesting.

## **5. BRIEFING – HUMAN IMMUNODEFICIENCY VIRUS (HIV) TESTING, WAC 246-100-207**

Diana Yu, Board Member, introduced a briefing on the need to revise an HIV testing rule related to informed consent. She explained that the Board revised the rule in 2009 based on 2006 CDC recommendations that HIV/AIDS testing be included as part of routine medical care. Tara Wolff, Board Staff, said today's briefing would be followed up by a hearing scheduled for November. She explained that CDC wants to reduce barriers to testing so that people would know to seek treatment if they were infected. It would help prevent their partners being infected. Maria Courogen, Department of Health, said in Washington State about 12,000 people live with HIV and about 15 percent of people infected with HIV are not aware of it. Detection is important so treatment can be started to improve health, and the potential for additional transmission can be reduced. People undergoing treatment who adhere to their medications are less likely to pass the virus to others. In 2009, the Board revised this rule to be more consistent with CDC recommendations for HIV testing. The Department has learned that the term "informed consent" is a legal term of art implying that consent needs to be written (RCW 7.70.060). The Department recommends removing the word "informed" from the rule, to allow either written or verbal consent. Health care providers would be able to impose a stricter standard on their own to require written consent, as some are doing now. Please refer to materials behind Tab 5 for additional information.

Member Kutz asked how the CDC guideline would be applied under such a rule change. He wondered if the rule wording could be changed to "notify." Ms. Courogen said this would be a bigger change than the one being proposed. She cautioned about being careful not to change the intent under which the 2009 rule revision was made, due to stakeholder concerns that surfaced during 2009 rule revision. Member Yu said she would consider a change in wording from "consent" to "notify" to be significantly different.

*The Board took a break at 10:37 a.m. and reconvened at 10:46 a.m.*

## **6. PUBLIC HEARING – FOOD SERVICE, CHAPTER 246-215 WAC**

Member Grellner introduced this hearing for revisions to food service rules. He explained the Board must consider the most current version of the U.S. Food and Drug Administration's Food Code when adopting food safety rules. The Board's rules currently reference the 2001 FDA Food Code. In 2009, the FDA Food Code was updated. The proposal intends to update the Board's rules to be consistent with the 2009 version of the FDA Food Code. Ned Therien, Board Staff, explained that a committee of stakeholders, called the Core Workgroup, met 11 times in 2010 and 2011 to develop recommendations on changes to the Board's food rules. The Department briefed the Board on this topic in March 2012. At that time, the Board heard how the Department's recommendations differ from those of the Core Workgroup. He said the Board heard testimony in March about one of the proposed provisions called "date marking." That led to additional consideration by the Department, which has resulted in the Department removing that provision from the proposal the Board is considering this day. Mr. Therien said one of the comments received on the current proposal identified a conflict with the state plumbing

code rule. He said that could be fixed with a little edit. David Gifford, Department of Health, gave a presentation that covered the history of Washington's food service rules, the revision process, the proposed significant modifications from the existing rules, a change in the proposal since March removing the date marking provision, formal comments received, and next steps. He explained that the proposal would add actual FDA Food Code language to the rules, rather than by reference. He said he hopes this would make future updates easier. He asked for a May 1, 2013, effective date to allow time for local health agencies to update their rules and for the Department to do training and revise inspection documents. Please refer to materials under Tab 6 for Mr. Gifford's presentation.

Member Oliver asked for an explanation of the science behind dropping the hot holding temperature from 140 degrees to 135 degrees. Mr. Gifford explained the upper growth temperature for bacterial pathogens is 128 degrees. Therefore, the buffer zone for preventing bacterial pathogen growth is between 128 and the regulatory temperature. By lowering the regulatory temperature to 135 degrees, there will be a smaller buffer zone but energy could be saved. Member Ortiz commented on the importance of food safety. She thanked the Core Workgroup members for their participation. Member Kutz asked if mushroom identification would be assured regardless of who picked them. Mr. Gifford responded that was correct. Chair Austin said he was pleased the testimony received in March was taken into account for the final proposal.

Testimony:

Aaron Henderson, Chair of the Washington State Environmental Health Directors' Group, expressed support for the rule proposal. He said the EH Directors' food committee was pleased with the diversity of the Core Workgroup, which resulted in great discussions.

Jan Gee, President of the Washington Food Industry Association, expressed support for the rule proposal. She said her association was represented on the Core Workgroup. She said Department staff, David Gifford and Joe Graham in particular, did an excellent job of working with stakeholders and making sure everyone was heard. She appreciated the balance of food safety concerns with economic impacts. She also provided written testimony.

Secretary Selecky reported getting an e-mail message from the Governor's office with kudos from the Washington Restaurant Association for the Department's excellent staff work with stakeholders. The Governor's office said it is a model for other agencies to follow.

***Motion:** The Board adopts the revisions to chapter 246-215 WAC as published in WSR 12-17-160, with a correction made by adding a reference to WAC 51-56-0600. The Board directs staff to file a CR-103 to make the revisions effective on May 1, 2013.*

***Motion/Second:** Yu/Grellner. Approved unanimously*

#### **BOARD MEMBER COMMENTS (taken out of order of approved agenda)**

Donna Wright, SBOH Member, reported attending the August meeting of the National Association of Local Boards of Health (NALBOH) in Atlanta. She said the educational track was robust and she found it difficult to choose what presentations to attend. She noted attending the round table for state boards of health. She learned that only 39 percent of boards nationally had formal orientation for new members. The conference provided information that could help substitute for orientation. She mentioned discussions about public health agency accreditation, evidence-based thinking, ethics, and the Affordable Card Act. The 2013 NALBOH meeting will be held in Salt Lake City in August. Member Wright also commented on and shared a recent Snohomish Health District resolution not to receive any more testimony about water fluoridation.



Don Oliver, SBOH Member, reported on the Wenatchee complex wildfires. He said the fires have lasted for five weeks. They have burned very close to the city limits and homes were threatened. The smoke at times was so bad he could not see more than two blocks away. He observed firefighting vehicles from all over the state. He appreciated all the help from everywhere. Many agencies, organizations, and businesses pulled together in response. Restaurants and hotels opened their doors for people who needed help. He expects wildfires will continue to burn in remote areas until snow covers the ground. Member Oliver said a fire team leader from New Mexico commented he never before had seen members of a community come together so much to help each other. Member Wright commented she heard from a fire district chief from her area who helped fight the wildfires that they were treated like rock stars, such as with gifts of food and even offers to wash their clothes. The firefighters felt much appreciated.

*The Board recessed for lunch at 11:42 p.m. and reconvened at 1:17 p.m.*

## **7. PUBLIC HEARING – GROUP B PUBLIC WATER SYSTEMS, CHAPTER 246-291 WAC**

Member Grellner introduced this hearing on revisions to the Group B drinking water system rules. He reminded the Board about receiving a briefing on the proposal in June 2012. Ned Therien explained these rules apply to small public drinking water systems. He said the 2009 legislature cut funding for Group B water system oversight. The Department had been working with stakeholders on a rule revision proposal even before then. The Department received 50 comments during the formal comment period. Seven of these comments recommend minor changes that the Department agrees with. He said the Department received an additional comment late the day before. He said these comments are listed in materials under Tab 7, with the late comment being separate. Denise Clifford, Department of Health, started the presentation by describing the extensive stakeholder work undertaken by the Department. She explained that the proposed rule framework, developed in response to budget cuts, emphasizes stricter initial design standards for which the Department may charge fees. She said this rule framework is more sustainable. She said a new addition to the proposed revisions would clarify the Department's authority to act in response to existing systems not serving safe "potable" water. Arsenic tolerance would be lower with new systems than existing systems, but all systems would have to notify their customers if the arsenic level exceeds the new standard. She said the Department would notify existing systems with a history of higher arsenic about this requirement. In response to a question from Secretary Selecky, Ms. Clifford clarified that the notification provisions for arsenic must include information about the health effects of arsenic, but that information is available on the Department's website. David Christensen, Department of Health, summarized public comments received during the formal comment period and those for which the Department was recommending some changes to the rule proposal, most of which would be minor clarifying changes. Several comments request a year delay in implementation of the rule, for which the Department recommends a January 1, 2014, effective date. He also explained the late comment received. In response to this three-part comment, Mr. Christensen said the Department recommended no change from the published proposal. For one part of the comment, related to property owner notification for expanding systems, he said the Department could and would clarify the provision in guidance. Ms. Clifford asked the Board to adopt the proposal with the changes noted; requested a January 1, 2014 effective date; and explained the steps for the Department to implement the rules.

Member Grellner said the Board's Environmental Health Committee heavily discussed the proposed radical change in framework for regulating Group B systems. He said the Committee came to accept it was the best that could be done with the budget situation. He clarified that the rule revision would

provide local health jurisdictions authority to adopt rules to continue to oversee Group B public water systems, if they so choose. He said a few local jurisdictions are providing leadership with Group B programs and would be able to continue them. He thanked staff of both the Department and the Board. Member Yu commented on the difficulty of some local health jurisdictions to get local rules adopted to continue or start local programs. She asked the Department to try to help such jurisdictions through education of consumers.

Public Testimony:

Aaron Henderson, Chair of the Washington State Environmental Health Directors' Group, spoke in support of the rule proposal. He said the rule process involved spirited discussions amongst the directors' group. He said, considering the funding cut, the rule revision proposal is good. He encouraged the Board to adopt the rule proposal so local health could move forward. He complimented staff of the Department, especially David Christensen, for listening to everyone's opinion while leading the rule revision effort.

Max Beers, purveyor for six Group B water systems in south King County, expressed concern about section 300(d) regarding collecting water quality samples when a source is vulnerable to potential contamination. He said the proposed rule would not adequately protect one of his water sources, which is a spring near Black Diamond he thinks was affected by Plum Creek timber activities, resulting in the need to chlorinate the water. He would like the rules to better address protecting his water sources from surrounding activities, especially since King County no longer has a water systems program.

Drew Noble, H2O Management Services, expressed several concerns with the rule revision proposal. One of his concerns is that the Group B water systems his satellite management agency oversees would no longer be required to be monitored for water quality. His other concerns are that the rules seem to allow people other than professional engineers to design Group B systems and to allow local health jurisdictions to grant waivers for too many things, including possibly for political considerations.

Danette York, Lewis County Public Health Director, expressed appreciation for the proposal extending the effective date of the revisions until January 2014. She said this would give her agency the time it needs to look into adopting local rules.

Member Grellner commented about proposed section 120 regarding design reports and professional engineers. He explained that if local health jurisdictions adopt rules they must be no less strict than state rules. He said there are other state rules specifying the scope of practice of professional engineers. Member Ortiz asked Mr. Grellner to comment on the testimony about a nearby development affecting a neighbor's water source. He explained that local jurisdictions try to take into account such things when reviewing land use activities. Mr. Christensen said that a spring is a highly risky source. He said local agencies have more tools than the Department of Health has to influence land uses. He said that is one of the reasons the proposed rules do not allow the Department to approve systems with spring sources, but would allow local health agencies implementing a Group B program to do so. Member Yu asked if the rule changes would preclude satellite management agencies from overseeing Group B water systems. Mr. Christensen said state law has required oversight by a satellite management agency of new public water systems since 1995. He said, although the proposed rules would no longer require periodic water quality monitoring, there are other system management activities that would need to be performed. Member Oliver commented on the riskier nature of spring sources compared to wells. Member Kutz commented

there seems to be a long list of exemptions for which a professional engineer is not required. Mr. Christensen clarified that the proposal would actually narrow what is considered a simple system, not required to have professional engineer design. He said the limited exemption from engineering design only would apply when a local health jurisdiction is implementing the program. Secretary Selecky thanked the staff who worked on the revision proposal. She said the rule revision is about doing things differently with less, protecting public health, and being good partners with local health agencies and Group B operators.

***Motion:** The Board adopts the revisions to chapter 246-291 WAC as published in WSR 12-17-138, with clarifying text changes recommended by the Department and approved by the Board today.*

*The Board directs staff to file a CR-103 to make the revisions effective January 1, 2014.*

***Motion/Second: Yu/Oliver.** Approved unanimously*

## **8. PUBLIC TESTIMONY**

Anne Clifton, Mercury Awareness Team of Washington, testified about an article from The Olympian with a vaccine manufacturer's perspective on the discrediting of the doctor in England who related vaccinations to autism from a study of 12 children. She believes giving measles and mumps vaccinations together is a big problem. She said the attack on Dr. Andrew Wakefield reminds her of the attack on Semmelweis, the doctor who first advocated hand washing before performing medical procedures but was discredited by other doctors of his time. She believes vaccine manufacturers have too much immunity from liability. She provided written testimony.

Alli Larkin, Vice President of Washington Action for Safe Water, expressed concern about the testing and certification of water fluoridation chemicals. She referred to a request from an Arkansas water district to the National Sanitation Foundation (NSF) for test results used to certify fluoridation chemicals under NSF Standard 60. She said the water system in Arkansas could not get a reply from NSF. She complained that no one is regulating NSF's approval of fluoridation chemicals. She quoted an e-mail message from Ned Therien to her about ANSI/NSF Standard 60 saying the Board does not review NSF's process. She asked: "Who is regulating the regulators?" She provided written testimony.

## **9. BRIEFING – ORAL HEALTH RISK FACTORS, SYSTEMIC CONNECTIONS, AND STRATEGIES**

James Sledge, Board Member, introduced Dr. Russell Maier, who is a family physician, a clinical professor at the University of Washington, and the chair of the Washington Dental Service Foundation. Dr. Maier's presentation focused on Washington's oral health status and prevention strategies. It included information on adults' and children's dental coverage, use of dental services, oral health status; the workforce; effective prevention; early intervention initiatives; fluoridation; and oral health in the health home. (See Tab 9 for more details.) He said Medicaid programs in Washington State have doubled access to care and cut in half the rate of untreated dental decay in the past five years. This is significantly better than most of the rest of the country. He described the extent of areas underserved by dentists across the state and the RIDE program to expand the dental workforce in such areas. He said Washington State was the second in the nation to train family physicians to check oral health and make referrals to dentists.

Member Sledge reported that 75 percent of recent RIDE students are now serving in community health clinics. Secretary Selecky commented she heard from students in the RIDE program that they



really appreciate the interdisciplinary approach to their training. She mentioned the Colville Community Clinic as an example for bringing dental services to a rural area.

Member Kutz asked what extended dental professionals are able to do to help provide services. Member Sledge responded they can help a licensed dentist with procedures, and that with extra training they may place fillings under supervision of a dentist. Member Yu commented that when she was in medical school there was very little training about the oral health needs of patients and is encouraged to see that changing. Dr. Maier closed by saying he was pleased to hear this week the American Dental Association has endorsed the Smiles for Life curriculum he helped develop for training physicians.

Secretary Selecky called on Allene Mares, Assistant Secretary for Prevention and Community Health, and Joella Pyatt, Oral Health Coordinator, to come up to the testimony table from the audience. They reported that the general fund support for the oral health program was cut to zero. They said the oral health program is operating with about \$200,000 in grant carry over funding. Some of that funding will be used to train drinking water plant operators about water fluoridation. The Department is working with four counties on oral sealant programs, and with a few other partners on other oral health programs. Chair Austin asked for information about the water treatment operator training program.

Member Kutz, asked for information regarding CMEs and the Smiles for Life program and about getting the providers in his organization trained. Ms. Pyatt said information is on the Department's website. Member Grellner commented on a dental program, described in a recent Kitsap Sun article, in which Kitsap County dentists donate dental care to adults in exchange for community service. The program is called Service with a Smile. Ms. Davis agreed to distribute the article to Board members.

#### **10. RECORDS RETENTION SCHEDULE UPDATE (taken out of order)**

Desiree Robinson, Board Staff, explained that the State Government General Records Retention Schedule has been revised to be more specific than before. She recommended the Board's records retention policy, adopted in 2008, be repealed in favor of the general state schedule.

***Motion:** The Board rescinds the Board-specific records retention schedule that was approved in 2008 and shall follow the State Government General Records Retention Schedule.*

***Motion/Second:** Ortiz/Sledge. Approved unanimously*

#### **11. BOARD MEMBER COMMENTS (taken out of order)**

Member Yu commented on a report from the Department of Health of an inadvertent release of confidential information contained in birth records. The information was not released to the general public, but for health research. She said the Health Promotion Committee of the Board discussed the issue during a noon meeting today. She said the Committee is satisfied the Department has remedied this problem. Secretary Selecky commented that the Department implemented a correction immediately when the inadvertent release of information was discovered.

Member Kutz complemented Christy Hoff for her great staff work for the Governor's Health Disparities Council.

Chair Austin commented about a family harvesting shellfish after dark got PSP poisoning. It apparently had harvested at the beach for many years and did not notice new signs warning of PSP.

#### **ADJOURNMENT**

John Austin, Board Chair, adjourned the meeting at 3:11 p.m.

**WASHINGTON STATE BOARD OF HEALTH**

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John Austin, Chair